IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.870 OF 1997
IN
WRIT PETITION NO.2431 OF 1994
WITH
APPEAL NO.568 OF 1999
IN
WRIT PETITION NO.2431 OF 1994

APPEAL NO.870/97:

Mrs. Dolla Lobo,
(Ms. Dolla Rodricks),
residing at Dr.Mehta Lane,
H. No. 139/I, Marve Road, Orlem,
Malad (West), Bombay-400 064. ...Appellant.

Vs.

1. Mr.Visvesvarya Industrial
Research and development Centre,
a company incorporated under the
Companies Act, 1956, having its
Registered office at Cuffe Parade,
Colaba, Bombay 400 005.
2. Mr. A. B. M. Shaikh,
Presenting Officer, 7th Labour Court,
Bombay, having his office at Arun
Chambers, 6th Floor, Tardeo,
Bombay-400 034. ...Respondents.

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Shri Ramrao Adik i/b. Shri T. R. Yadav for the Appellant.
Shri P. K. Rele with S/Shri Vinod Tayade and Rajesh P. Rele i/b. Shri Piyush Shah for the Respondent No.1.

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APPEAL NO.568/99:

Mr.Visvesvarya Industrial

Research and development Centre,
a company incorporated under the
Companies Act, 1956, having its
Registered office at Cuffe Parade,
Colaba, Bombay 400 005. ...Appellant.

Vs.

1. Mrs. Dolla Lobo,
   (Ms. Dolla Rodricks),
   residing at Dr.Mehta Lane,
   H. No. 139/I, Marve Road, Orlem,
   Malad (West), Bombay-400 064.
2. Mr. A. B. M. Shaikh,
   Presenting Officer, 7th Labour Court,
   Bombay, having his office at Arun
   Chambers, 6th Floor, Tardeo,
   Bombay-400 034. ...Respondents.

....

Shri P. K. Rele with S/Shri Vinod Tayade and Rajesh P. Rele i/b. Shri Piyush Shah for the appellant.
Shri Ramrao Adik i/b. Shri T. R. Yadav for the respondent No.1.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

January 15, 2007.

ORAL JUDGMENT (PER R. M. S. KHANDEPARKAR, J.):

Appeal No.568 of 1999 not on Board. By consent taken on Board.

2. Since there are common question of law and facts in both these appeals and they arise out of the same judgment in Writ

Petition No.2431 of 1994, they were heard together and are being disposed of by this common judgment. While Appeal No.568 of 1999 is filed by the employer, Appeal No.870 of 1997 is by the employee.

3. By the impugned order, the Learned Single Judge while allowing the Writ Petition against the award dated 4th August 1994 passed by the Labour Court, has ordered payment of compensation in lieu of reinstatement which was ordered by the Labour Court along with 50% back wages.

4. While the employee has challenged the impugned order contending that once the Labour Court had held that the employee was entitled for reinstatement on account of the finding arrived at by the Enquiry Officer being not based on the evidence led before the Enquiry Officer and on that account the punishment being disproportionate to the proved misconduct; the Learned Single Judge could not have set aside the impugned award passed by the Labour Court so as to order payment of the compensation in

lieu of reinstatement of the employee in service. On the other hand, the contention of the management is that the Labour Court could not have held that the findings were not based on evidence once the Labour Court held that the findings by the Enquiry Officer were not perverse and that there was no justification for the Labour Court to interfere with the quantum of punishment imposed by the management based on proved misconduct.

5. The perusal of the record and in particular, the order passed by the Labour Court undoubtedly discloses a finding arrived at by the Labour Court on the analysis of the report of the Enquiry Officer and whatever material which was placed before the Enquiry Officer that the findings which were arrived at by the Enquiry Officer in relation to those material were not perverse. At the same time and surprisingly, the Labour Court had come to the conclusion that those findings were not based on any evidence led before the Enquiry Officer. Even the perusal of the report on the basis of evidence which was led before the Enquiry Officer discloses that the said finding by the Labour Court regarding the

absence of the evidence before the Enquiry Officer is totally contrary to the material on record. Indeed as rightly submitted on behalf of the employer, once the Labour Court had found that the findings arrived at by the Enquiry Officer being not perverse, the said Court could not have, at the same time, held that those findings were based on no evidence. If the findings were based on no evidence, the same could not have been certified as being not perverse. In view of the Labour Court's finding that the findings of the Enquiry Officer to be not perverse and considering the materials placed before the Enquiry Officer clearly warranted the said finding. in our considered opinion, the Labour Court was not correct and justified in holding that those findings were based on no evidence.

6. Despite of the said finding regarding the Enquiry Officer' findings being based on evidence, the management in all fairness when the matter came up before the Learned Single Judge opted to pay compensation in lieu of reinstatement of the employee in service, to the extent of the period from the date of termination till

the date of disposal of the proceedings before the the Labour Court, i.e. for a period of 13 years. It is to be noted that undisputedly, the employee was employed with effect from 1st September 1977 and her services came to be terminated on 30th August 1981. The Labour Court Award Part-II was passed on 4th August 1994. Taking into consideration that the employee had rendered service only for four years and the employer having shown willingness to pay compensation in lieu of reinstatement of the employees calculated for a period of 13 years, in our considered opinion, there is absolutely no case made out for the interference with the impugned order.

7. Though attempts were made to contend that the findings arrived at by the Labour Court in Award Part-I regarding the enquiry being conducted in a fair and proper manner and fair opportunity was given to the parties to lead evidence has been not borne out of the record, in fact the records clearly support the said finding. Bare perusal of the Award Part-I discloses that the Labour Court having taken into consideration the entire materials as well

as the details regarding the proceedings before the Enquiry Officer had held that the enquiry was conducted in a fair and proper manner and sufficient opportunity was given to the employee to defend her case. In our considered opinion there is no case made out for interference in the said finding.

8. Applying the law laid down by the Apex Court in several cases, awarding of the compensation in lieu of reinstatement taking into consideration the wages payable for a period of 13 years to an employee who had rendered service only for four years, by no stretch of imagination can be said insufficient or unjustified. That being so, there is absolutely no case for interference made out and hence both the appeals need to be dismissed with no order as to costs.

9. Appeals are dismissed accordingly. There shall be no order as to costs. However, in the case of Appeal No.568 of 1999, the appellant shall pay costs of Rs.1,000/- within two weeks as ordered by the order dated 4th May 1999.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)